

HOUSE No. 700

By Mr. Murphy of Burlington, petition of Charles A. Murphy and others for legislation to amend the wiretap and electronic surveillance statute. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

| | |
|-------------------|-----------------|
| Charles A. Murphy | David P. Linsky |
| Thomas F. Reilly | James B. Leary |

In the Year Two Thousand and Five.

AN ACT UPDATING THE MASSACHUSETTS WIRETAP STATUTE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 i. Chapter 272 of the General Laws is hereby amended by
- 2 striking out Section 99 and inserting, in place thereof, the
- 3 following new section:—
- 4 iii. Section 99. Wiretap and Electronic Surveillance
- 5 iv. A. Preamble
- 6 v. The purpose of this Chapter is to provide a procedure for law
- 7 enforcement agencies to seek court-approved wire and surveil-
- 8 lance orders that will keep pace with modern technology and
- 9 criminal techniques, while at the same time protecting individual
- 10 rights and privacy.
- 11 vi. B. Definitions.
- 12 vii. As used in this Chapter:
- 13 ix. a) “Aggrieved person” means a person who was a party to
- 14 any intercepted wire, oral, or electronic communication or a
- 15 person against whom the interception was directed.
- 16 xi. b) “Attorney for the state” means the attorney general, any
- 17 assistant attorney general specially designated by the attorney
- 18 general, any district attorney, or any assistant district attorney spe-
- 19 cially designated by the district attorney authorized to commence
- 20 and prosecute an action under this Chapter.

21 xiii. (c) “Aural transfer” means a transfer containing the human
22 voice at any point between and including the point of origin and
23 the point of reception.

24 xv. (d) “Communication common carrier” means any person
25 engaged as a common carrier in providing or operating wire or
26 electronic communication facilities.

27 xvii. (e) “Contents” when used with respect to any wire, oral, or
28 electronic communication, includes any information concerning
29 the substance, purport, or meaning of that communication.

30 xix. (f) “Corporate and institutional trading partners” means
31 financial institutions and general business entities and corpora-
32 tions which engage in the business of cash and asset management,
33 asset management directed to custody operations, securities
34 trading, and wholesale capital markets including foreign
35 exchange, securities lending, and the purchase, sale or exchange
36 of securities, options, futures, swaps, derivatives, repurchase
37 agreements and other similar financial instruments with such
38 financial institution.

39 (g) “Court of competent jurisdiction” means a superior court of
40 the Commonwealth.

41 xxi. (h) “Electronic communication” means any transfer of
42 signs, signals, writing, images, sounds, data, or intelligence of any
43 nature transmitted in whole or in part by a wire, radio, electro-
44 magnetic, photo-electronic or photo-optical system, excluding:

45 (1) the radio portion of a cordless telephone communication
46 that is transmitted between the cordless telephone handset and the
47 base unit;

48 (2) any wire or oral communication;

49 (3) any communication made through a tone-only paging
50 device;

51 (4) any communication from a tracking device, defined as an
52 electronic or mechanical device which permits the tracking of the
53 movement of a person or object; or

54 xxiii. (5) electronic funds transfer information stored by a
55 financial institution in a communications system used for the elec-
56 tronic storage and transfer of funds.

57 (i) “Electronic communication service” means any service
58 which provides to its users the ability to send or receive wire or
59 electronic communications.

60 xxvii. (j) “Electronic communications system” means any wire,
61 radio, electromagnetic, photo-optical or photo-electronic facilities
62 for the transmission of wire or electronic communications, and
63 any computer facilities or related electronic equipment for the
64 electronic storage of such communications.

65 (k) “Electronic, mechanical, or other device” means any device
66 or apparatus which can be used to intercept a wire, oral, or elec-
67 tronic communication other than:

68 (1) any telephone or telegraph instrument, equipment or
69 facility, or any component thereof:

70 (A) furnished to the subscriber or user by a provider of wire or
71 electronic communication service or commercial entity in the
72 ordinary course of its business, and being used by the subscriber
73 or user in the ordinary course of its business, or furnished by such
74 subscriber or user for connection to the facilities of such service
75 and used in the ordinary course of its business; or

76 (B) being used by a provider of wire or electronic communica-
77 tion service in the ordinary course of its business, or by an inves-
78 tigative or law enforcement officer in the ordinary course of the
79 officer’s duties; or

80 xxix.(2) a hearing aid or similar device being used to correct
81 subnormal hearing to not better than normal.

82 (l) “Electronic storage” means:

83 xxx. (1) any temporary, intermediate storage of a wire or elec-
84 tronic communication incidental to the electronic transmission
85 thereof; and

86 xxxiii. (2) any storage of such communication by an electronic
87 communication service for purposes of backup protection of such
88 communication.

89 xxxv. (m) “Financial institution” means a bank, as defined in
90 section 1 of chapter 167, and an investment bank, securities
91 broker, securities dealer, investment adviser, mutual fund, invest-
92 ment company or securities custodian as defined in section 1.165-
93 12(c)(1) of the United States Treasury Regulations.

94 xxxvii. (n) “Intercept” means the aural or other acquisition of
95 the contents of any wire, electronic or oral communication
96 through the use of any electronic, mechanical, or other device;
97 provided that it shall not constitute an interception for an inves-
98 tigative or law enforcement officer, as defined in this section, to

99 record or transmit a wire, electronic or oral communication if the
100 officer is a party to such communication or has been given prior
101 authorization to record or transmit the communication by such a
102 party and if recorded or transmitted in the course of an investiga-
103 tion of any offense described in Section G.

104 xxxix. (o) “Investigative or law enforcement officer” means
105 any officer of the federal government, the state or political subdi-
106 vision thereof, who is empowered by law to conduct investiga-
107 tions of or to make arrests for offenses enumerated in this
108 Chapter, and any attorney authorized by law to prosecute or par-
109 ticipate in the prosecution of such offenses.

110 xli. (p) “Judge of competent jurisdiction” means any judge of
111 the superior court of the Commonwealth.

112 xliii. (q) “Oral communication” means any verbal communica-
113 tion uttered by a person exhibiting an expectation that such com-
114 munication is not subject to interception under circumstances
115 justifying such expectation. However, such term excludes any
116 electronic communication.

117 xlv. (r) “Pen register” means a device or process which records
118 or decodes dialing, routing, addressing, or signaling information
119 transmitted by an instrument or facility from which a wire or elec-
120 tronic communication is transmitted, provided, however, that such
121 information shall not include the contents of any communication.
122 Such term excludes any device or process used by a provider or
123 customer of a wire or electronic communication service for
124 billing, or recording as an incident to billing, for communications
125 services provided by such provider of any device used by a
126 provider, or any device or process used by a provider or customer
127 of a wire communication service for billing, cost accounting or
128 other like purposes in the ordinary course of its business.

129 xlvii. (s) “Person” means any employee, or agent of the United
130 States or any state or political subdivision thereof, and any indi-
131 vidual, partnership, association, joint stock company, trust, or cor-
132 poration.

133 (t) “Readily accessible to the general public” means, with
134 respect to a radio communication, that such communication is not:

135 (1) scrambled or encrypted;

136 (2) transmitted using modulation techniques whose essential
137 parameters have been withheld from the public with the intention
138 of preserving the privacy of such communication;

139 (3) carried on a subcarrier or other signal subsidiary to a radio
140 transmission;

141 (4) transmitted over a communication system provided by a
142 common carrier, unless the communication is a tone only paging
143 system communication; or

144 (5) transmitted on frequencies allocated under part 25, subpart
145 D, E, or F of part 74, or part 94 of the Rules of the Federal Com-
146 munications Commission, unless, in the case of a communication
147 transmitted on a frequency allocated under part 74 that is not
148 exclusively allocated to broadcast auxiliary services, the commu-
149 nication is a two-way voice communication by radio.

150 1. (u) “Trap and trace device” means a device or process which
151 captures the incoming electronic or other impulses which identify
152 the originating number or other dialing, routing, addressing, and
153 signaling information reasonably likely to identify the source of a
154 wire or electronic communication, provided, however, that such
155 information shall not include the contents of any communication.
156 Provided, however, that any caller identification device lawfully
157 installed shall be excluded from this definition.

158 (v) “User” means any person or entity who:

159 (1) uses an electronic or wire communication service; and

160 lii.(2) is duly authorized by the provider of such service to
161 engage in such use.

162 liv.(w) “Wire communication” means any aural transfer made
163 in whole or in part through the use of facilities for the transmis-
164 sion of communications by the aid of wire, cable, or other like
165 connection between the point of origin and the point of reception,
166 including the use of such connection in a switching station, fur-
167 nished or operated by any person engaged in providing or oper-
168 ating such facilities for the transmission of intrastate, interstate or
169 foreign communications or communications affecting intrastate,
170 interstate or foreign commerce. However, such term excludes the
171 radio portion of a cordless telephone communication that is trans-
172 mitted between the cordless telephone handset and the base unit.

173 iv. C. Unlawful Interception and Disclosure of Wire, Oral, or
174 Electronic Communications

175 (a) Except as provided in subsection (d), it is unlawful for a
176 person to intentionally:

177 lvi. (1) intercept, endeavor to intercept, or procure any other
178 person to intercept or endeavor to intercept, any wire, oral, or
179 electronic communication;

180 lviii. (2) use, endeavor to use, or procure any other person to
181 use or endeavor to use any electronic, mechanical, or other device
182 to intercept any oral communication when:

183 (A) such device is affixed to, or otherwise transmits a signal
184 through, a wire, cable, or other like connection used in wire com-
185 munications; or

186 lix.(B) such device transmits communications by radio, or
187 interferes with transmission of such communication.

188 (3) disclose, or endeavor to disclose, to any other person the
189 contents of any wire, oral, or electronic communication, knowing
190 or having reason to know that the information was obtained
191 through the interception of a wire, oral, or electronic communica-
192 tion in violation of this subsection; or

193 lx. (4) use, or endeavor to use, the contents of any wire, oral, or
194 electronic communication, knowing or having reason to know that
195 the information was obtained through the interception of a wire,
196 oral, or electronic communication in violation of this subsection;
197 or

198 lxiii. (5) edit, alter or tamper with any tape, transcription or
199 recording of wire, oral or electronic communications by any
200 means, or attempt to edit, alter or tamper with any tape, transcrip-
201 tion or recording of wire, oral or electronic communications by
202 any means with the intent to present in any judicial proceeding or
203 proceeding under oath, or present such recording or permit such
204 recording to be presented in any judicial proceeding or proceeding
205 under oath, without fully indicating the nature of the changes
206 made in the original state of the recording.

207 lxv. (b) Proof of the installation of any intercepting device by
208 any person under circumstances evincing an intent to commit an
209 interception, which is not authorized or permitted by this section,
210 shall be prima facie evidence of a violation of this subsection.

211 lxvii. (c) Any person who violates subsection (a) and any
212 person who permits or on behalf of any other person commits or
213 attempts to commit, or any person who participates in a con-
214 spiracy to commit or attempt to commit, or any accessory to a
215 person who commits a violation of subsection (a) shall be pun-

216 ished as provided in subsection (f) or shall be subject to suit as
217 provided in Section Q.

218 lxviii. (d) It shall be lawful under this Chapter for:

219 (1) an operator of a switchboard, or an officer, employee, or
220 agent of a provider of wire or electronic communication service,
221 whose facilities are used in the transmission of a wire communica-
222 tion, to intercept, disclose, or use that communication in the
223 normal course of that person's employment while engaged in any
224 activity which is a necessary incident to the rendition of that per-
225 son's service or to the protection of the rights or property of the
226 provider of that service, or which is necessary to prevent the use
227 of such facilities in violation of section fourteen A of chapter two
228 hundred and sixty-nine of the general laws; except that a provider
229 of wire communication service to the public shall not utilize
230 service observing or random monitoring except for mechanical or
231 service quality control checks;

232 (2) (A) providers of wire or electronic communication service,
233 their officers, employees, and agents, landlords, custodians, or
234 other persons, to provide information, facilities, or technical assis-
235 tance to persons authorized by law to intercept wire, oral, or elec-
236 tronic communications or to conduct electronic surveillance, if
237 such provider, its officers, employees, or agents, landlord, custo-
238 dian, or other specified person, has been provided with:

239 (i) a court order directing such assistance signed by the autho-
240 rizing judge; or

241 (ii) a certification in writing by the attorney for the state that no
242 warrant or court order is required by law, that all statutory require-
243 ments have been met, and that the specified assistance is required.
244 The certification shall set forth the period of time during which
245 the provision of information, facilities, or technical assistance is
246 authorized and specifying the information, facilities, or assistance
247 required;

248 (B) No provider of wire or electronic communication service,
249 officer, employee, or agent thereof, or landlord, custodian, or
250 other specified person shall disclose the existence of any intercep-
251 tion or surveillance or the device used to accomplish the intercep-
252 tion or surveillance with respect to which the person has been
253 furnished a court order or certification under this Chapter, except
254 as may otherwise be required by legal process and then only after

255 prior notification to the attorney for the state as may be appro-
256 priate. Any such disclosure, shall render such person liable for
257 the civil damages provided for in Section Q.

258 (C) No cause of action shall lie in any court against any
259 provider of wire or electronic communication service, its officers,
260 employees, or agents, landlord, custodian, or other specified
261 person for providing information, facilities, or assistance in accor-
262 dance with the terms of a court order or certification under this
263 Chapter.

264 (3) a person to intercept or access an electronic communication
265 made through an electronic communication system that is config-
266 ured so that such electronic communication is readily accessible
267 to the general public;

268 (4) a person to intercept any radio communication which is
269 transmitted:

270 (A) by any station for the use of the general public, or that
271 relates to ships, aircraft, vehicles, or persons in distress;

272 (B) by any governmental, law enforcement, civil defense, pri-
273 vate land mobile, or public safety communications system,
274 including police and fire, readily accessible to the general public;

275 (C) by a station operating on an authorized frequency within
276 the bands allocated to the amateur, citizens band, or general
277 mobile radio service; or

278 (D) by any marine or aeronautical communications system;

279 (5) a person to engage in any conduct which:

280 (A) is prohibited by Section 633 of the Communications Act of
281 1934; or

282 (B) is excepted from the applications of Section 705(a) of the
283 Communications Act of 1934 by Section 705(b) of that Act;

284 (6) a person to intercept any wire or electronic communication
285 the transmission of which is causing harmful interference to any
286 lawfully operating station or consumer electronic equipment, to
287 the extent necessary to identify the source of such interference;

288 (7) other users of the same frequency to intercept any radio
289 communication made through a system that utilized frequencies
290 monitored by individuals engaged in the provision or the use of
291 such system, if such communication is not scrambled or
292 encrypted;

293 (8) a person to use a pen register or a trap and trace device in
294 accordance with the provisions defined in this Chapter;

295 (9) a provider of electronic communication service to record
296 the fact that a wire or electronic communication was initiated or
297 completed in order to protect such provider, another provider fur-
298 nishing service toward the completion of the wire or electronic
299 communication, or a user of that service, from fraudulent,
300 unlawful or abusive use of such service;

301 (10) investigative and law enforcement officers of the United
302 States of America to violate the provisions of this section if acting
303 pursuant to authority of the laws of the United States and within
304 the scope of their authority;

305 (11) any person duly authorized to make specified interceptions
306 by a warrant issued pursuant to this section;

307 (12) investigative or law enforcement officers to violate the
308 provisions of this section for the purposes of ensuring the safety
309 of any law enforcement officer or agent thereof who is acting in
310 an undercover capacity, or as a witness for the Commonwealth;
311 provided, however, that any such interception which is not other-
312 wise permitted by this section shall be deemed unlawful for pur-
313 poses of Section I(m);

314 (13) a financial institution to record telephone communications
315 with its corporate or institutional trading partners in the ordinary
316 course of its business; provided, however, that such financial
317 institution shall establish and maintain a procedure to provide
318 semi-annual written notice to its corporate and institutional
319 trading partners that telephone communications over designated
320 lines will be recorded;

321 (14) a person acting under color of law to intercept the wire or
322 electronic communications of a computer trespasser transmitted
323 to, through or from a computer, if:

324 (A) the owner or operator of the computer authorizes the inter-
325 ception of the computer trespasser's communication on the com-
326 puter;

327 (B) the person acting under color of law is lawfully engaged in
328 an investigation;

329 (C) the person acting under color of law has reasonable grounds
330 to believe that the contents of the computer trespasser's communi-
331 cations will be relevant to the investigation; and

332 (D) such interception does not acquire communications other
333 than those transmitted to or from the computer trespasser;

334 (15) any investigative or law enforcement officer, specially des-
335 ignated by the Attorney General or a District Attorney, who rea-
336 sonably determines that an emergency situation exists that
337 involves immediate danger of death or serious physical injury to
338 any person, and there are grounds upon which an order could be
339 entered under this chapter to authorize such interception, may
340 intercept such wire, oral, or electronic communication if an appli-
341 cation for an order approving the interception is made in accor-
342 dance with this section within forty-eight hours after the
343 interception has occurred, or begins to occur. In the absence of an
344 order, such interception shall immediately terminate when the
345 communication sought is obtained or when the application for the
346 order is denied, whichever is earlier. In the event such application
347 for approval is denied, the contents of any wire, oral, or electronic
348 communication intercepted shall be subject to the prohibitions set
349 forth in Section F and the civil remedies of Section Q. No such
350 violation shall be subject to criminal penalties.

351 (16) for an employee of:

352 (A) an ambulance service licenced pursuant to the General
353 Laws, a fire station employing firefighters, as defined by the
354 General Laws, a law enforcement agency as defined by this
355 chapter, or any other entity with published emergency telephone
356 numbers; or

357 Ixix.(B) an agency operating an emergency telephone number
358 “911” system established pursuant to the General Laws, to inter-
359 cept and record incoming wire and electronic communications;
360 however, such employee may intercept and record incoming wire
361 and electronic communications to designated “911” telephone
362 numbers and published non-emergency telephone numbers staffed
363 by trained dispatchers at public safety answering points only. It is
364 also lawful for such employee to intercept and record outgoing
365 wire or electronic communications to the numbers from which
366 such incoming wire or electronic communications were placed
367 when necessary to obtain information required to provide the
368 emergency services being requested.

369 Ixx. (e) (1) Except as provided in paragraph (2) of this subsec-
370 tion, a person or entity providing an electronic communication
371 service to the public shall not intentionally divulge the contents of
372 any communication, other than one to such person or entity, or an
373 agent thereof, while in transmission on that service to any person

374 or entity other than an addressee or intended recipient of such
375 communication or an agent of such addressee or intended recip-
376 ient.

377 (2) A person or entity providing electronic communication
378 service to the public may divulge the contents of any such com-
379 munication:

380 (A) as otherwise authorized in Section C(d) or H of this
381 Chapter;

382 (B) with the lawful consent of the originator or any addressee
383 or intended recipient of such communication;

384 (C) to a person employed or authorized, or whose facilities are
385 used, to forward such communication to its destination; or

386 (D) which were inadvertently obtained by the service provider
387 and which appear to pertain to the commission of a crime, if such
388 divulgence is made to a law enforcement agency.

389 lxxiv. (f) Except as otherwise specifically provided in this
390 section, any person who willfully commits an interception,
391 attempts to commit an interception, or procures any other person
392 to commit an interception or to attempt to commit an interception
393 of any wire, oral or electronic communication shall be fined not
394 more than ten thousand dollars, or imprisoned in the state prison
395 for not more than five years, or imprisoned in a jail or house of
396 correction for not more than two and one half years, or both so
397 fined and given one such imprisonment.

398 lxxvi. D. Unlawful Manufacture, Distribution, Possession, and
399 Advertising of Wire, Oral, or Electronic Communication Inter-
400 cepting Devices.

401 (a) Except as provided in subsection (c), it is unlawful for any
402 person to intentionally:

403 (1) transport or transmit any electronic, mechanical, or other
404 device, knowing or having reason to know that the design of such
405 device renders it useful for the purpose of the surreptitious inter-
406 ception of wire, oral, or electronic communications, or knowing or
407 having reason to know that the device is intended for surreptitious
408 interception of wire, oral, or electronic communications; or

409 (2) manufacture, assemble, possess, or sell any electronic,
410 mechanical, or other device, knowing or having reason to know
411 that the design of such device renders it useful for the purpose of
412 the surreptitious interception of wire, oral, or electronic communi-
413 cations, or knowing or having reason to know that the device is

414 intended for surreptitious interception of wire, oral, or electronic
415 communications; or

416 (3) place in any newspaper, magazine, handbill, or other publi-
417 cation any advertisement of:

418 (A) Any electronic, mechanical, or other device, knowing or
419 having reason to know that the design of such device renders it
420 useful for the purpose of surreptitious interception of wire, oral, or
421 electronic communications, or knowing or having reason to know
422 that the device is intended for surreptitious interception of wire,
423 oral, or electronic communications; or

424 lxxviii.(B) any other electronic, mechanical, or other device,
425 where such advertisement promotes the use of such device for the
426 purpose of the surreptitious interception of wire, oral, or elec-
427 tronic communications.

428 lxxx. (b) A person who violates subsection (a) shall be fined
429 not more than \$10,000, or imprisoned not more than five years in
430 state prison or not more than two and one half year in a jail or
431 house of correction, or both such fine and imprisonment.

432 lxxxii. (c) The installation of any such intercepting device by
433 such person or with his permission or at his direction shall be
434 prima facie evidence of possession as required by subsection (a).

435 lxxxiv. (d) Any person who permits or on behalf of any other
436 person commits or attempts to commit, or any person who partici-
437 pates in a conspiracy to commit or attempt to commit, or any
438 accessory to a person who commits a violation of subsection (a)
439 shall be punished in the same manner as is provided for the
440 respective offenses as described in subsection (b).

441 (e) Notwithstanding subsection (a), it shall be lawful for a
442 person to transport, or manufacture, assemble, possess, or sell any
443 electronic, mechanical, or other device, knowing or having reason
444 to know that the design of such device renders it primarily useful
445 for the purpose of the surreptitious interception of wire, oral, or
446 electronic communications, or knowing or having reason to know
447 that the device is intended for surreptitious interception of wire,
448 oral, or electronic communications, if the person is:

449 (1) a provider of wire or electronic communication service or
450 an officer, agent, or employee of, or a person under contract with,
451 such a provider, in the normal course of the business of providing
452 that wire or electronic communication service; or

453 lxxxvi. (2) an officer, agent, or employee of, or a person under
454 contract with, bidding upon contracts with, or in the course of
455 doing business with, the United States, a state, or a political subdi-
456 vision thereof, in the normal course of the activities of the United
457 States, a state, or a political subdivision thereof.

458 lxxxviii. E. Confiscation of Wire, Oral, or Electronic Commu-
459 nication Interception Devices.

460 xc. Upon conviction of a violation of this section, any elec-
461 tronic, mechanical, or other device used, sent, carried, manufac-
462 tured, assembled, possessed or sold in violation of this Chapter
463 may be confiscated by the commonwealth and forwarded, by the
464 authority of the written order of the court, to the colonel of the
465 state police, who shall destroy said article.

466 xcii. F. Prohibition of Use as Evidence of Intercepted Wire,
467 Oral or Electronic Communications.

468 xciv. No part of the contents of any wire, oral or electronic
469 communication intercepted in violation of this Chapter, and no
470 evidence derived therefrom, may be received in evidence in any
471 trial, hearing, or other proceeding in or before any court, grand
472 jury, department, officer, agency, regulatory body, legislative com-
473 mittee, or other authority of this state, or political subdivision
474 thereof, if the disclosure of that information would be in violation
475 of this chapter. The prohibition of use as evidence provided in
476 this section does not apply in cases of prosecution for criminal
477 interception in violation of the provisions of this chapter.

478 xcvi. G. Authorization for Interception of Wire, Oral, or Elec-
479 tronic Communications.

480 (a) The attorney for the state may authorize an application to a
481 judge of competent jurisdiction for, and such judge may grant in
482 conformity with Section I of this Chapter an order authorizing the
483 interception of wire, oral or electronic communications by an
484 investigative or law enforcement officer, or an agency having
485 responsibility for the investigation of the offense as to which the
486 application is made, when such interception may provide or has
487 provided evidence of:

488 (1) any offense which involves murder, kidnapping, robbery, or
489 extortion;

490 (2) any of the following offenses: arson, assault and battery
491 with a dangerous weapon, bribery, burglary, misuse of credit cards

492 or fraudulent use of credit cards to obtain money, goods or serv-
493 ices, malicious destruction of property, embezzlement, escape,
494 throwing or placing explosives at or near persons or property,
495 illegal possession or storage of explosives, possession of infernal
496 machines, forgery, gaming in violation of sections sixteen and
497 seventeen, seventeen A and seventeen B of chapter two hundred
498 and seventy-one of the general laws, identity fraud in violation of
499 section 37E of chapter two hundred sixty-six of the general laws,
500 insurance fraud, intimidation of witnesses or jurors or persons fur-
501 nishing information in connection with criminal proceedings, lar-
502 ceny, lending of money or things of value in violation of the
503 general laws, mayhem, escape, perjury, subornation of perjury,
504 receiving stolen property, communicating terroristic threats, pos-
505 sessing or using chemical, biological or nuclear weapons, posses-
506 sion or use of hoax substances;

507 (3) any offense involving the distribution of a narcotic drug,
508 marijuana, or other dangerous drug;

509 (4) coercion of child under eighteen into criminal conspiracy,
510 inducing person under eighteen to have sexual intercourse, pos-
511 session or dissemination of matter harmful to minors, posing or
512 exhibiting child in state of nudity or sexual conduct, dissemina-
513 tion of visual material of child in state of nudity or sexual con-
514 duct, purchase or possession of visual material of child depicted in
515 sexual conduct;

516 (5) any offense punishable by imprisonment for more than one
517 year involving the possession or distribution of firearms;

518 (6) any accessory to any offense described in this section or any
519 conspiracy or attempt or solicitation to commit any offense
520 described in this subsection;

521 (7) the location of any fugitive from justice from an offense
522 described in this subsection.

523 xcix. H. Authorization for Disclosure and Use of Intercepted
524 Wire, Oral, and Electronic Communications.

525 c. (a) Any investigative or law enforcement officer who, by
526 any means authorized by this Chapter, has obtained knowledge of
527 the contents of any wire, oral, or electronic communication, or
528 evidence derived therefrom, may:

529 (1) disclose such contents to another investigative or law
530 enforcement officer to the extent that such disclosure is appro-

531 priate to the proper performance of the official duties of the
532 officer making or receiving the disclosure; or

533 cii.(2) use such contents to the extent such use is appropriate to
534 the proper performance of the officer's official duties.

535 civ. (b) Any person who has received, by any means authorized
536 by this Chapter, any information concerning a wire, oral, or elec-
537 tronic communication, or evidence derived therefrom, intercepted
538 in accordance with the provisions of this Chapter may disclose the
539 contents of that communication or such derivative evidence while
540 giving testimony under oath or affirmation in any proceeding in
541 any court of the United States or of any state or in any federal or
542 state grand jury proceeding.

543 cv.(c) No otherwise privileged wire, oral, or electronic commu-
544 nication intercepted in accordance with, or in violation of, the pro-
545 visions of this Chapter shall lose its privileged character.

546 cvi. (d) An investigative or law enforcement officer engaged in
547 intercepting wire, oral, or electronic communications in the
548 manner authorized herein, who intercepts wire, oral, or electronic
549 communications relating to offenses other than those specified in
550 the order of authorization or approval, may disclose or use the
551 contents thereof, and evidence derived therefrom, as provided in
552 subsection (a) of this section. Such contents and any evidence
553 derived therefrom may be used under subsection (b) of this
554 section if a judge of competent jurisdiction so authorizes after
555 finding on subsequent application that the contents were otherwise
556 intercepted in accordance with the provisions of this Chapter.

557 cviii. (e) Except as otherwise specifically provided in this
558 section, any person who willfully discloses to any person, any
559 information concerning or contained in, the application for, the
560 granting or denial of orders for interception, renewals, notice or
561 return on an ex parte order granted pursuant to this section, or the
562 contents of any document, tape, or recording kept in accordance
563 with Section I (m), shall be guilty of a misdemeanor punishable
564 by imprisonment in a jail or house of correction for not more than
565 two years or by a fine of not more than five thousand dollars or
566 both.

567 cx. I. Procedure for Interception of Wire, Oral, or Electronic
568 Communications

569 cxii. (a) An application for a warrant authorized by this section
570 must be made to a judge of competent jurisdiction in the county

571 where the interception is to occur, or the county where the office
572 of the applicant is located, or in the event that there is no judge of
573 competent jurisdiction sitting in said county at such time, to a
574 judge of competent jurisdiction sitting in Suffolk County; except
575 that for these purposes, the office of the attorney general shall be
576 deemed to be located in Suffolk County.

577 (b) Each application for an order authorizing or approving the
578 interception of a wire, oral, or electronic communication under
579 this Chapter shall be made in writing upon oath or affirmation and
580 shall state:

581 (1) the identity of the investigative or law enforcement officer
582 making the application, and the officer authorizing the applica-
583 tion;

584 (2) the applicant's authority to make such application;

585 (3) fully and completely the facts and circumstances relied
586 upon by the applicant, to justify the applicant's belief that an order
587 should be issued, including:

588 (B)(A) details as to the particular offense that has been, is
589 being, or is about to be committed;

590 (C)(B) except as provided in subsection (p) of this section, a
591 description of the nature and location of the facilities from which
592 or the place where the communication is to be intercepted;

593 (D)(C) a particular description of the type of communications
594 sought to be intercepted and that such communications are not
595 legally privileged; and

596 (E) (D) the identity of the person, if known, committing the
597 offense and whose communications are to be intercepted;

598 (4) whether or not other investigative procedures have been
599 tried and failed or why they reasonably appear unlikely to succeed
600 if tried or otherwise might be too dangerous;

601 (5) the period of time for which the interception is required to
602 be maintained;

603 (6) the facts concerning all previous applications known to the
604 individual authorizing and making the application, made to any
605 judge for authorization to intercept, or for approval of intercep-
606 tions of, wire, oral, or electronic communications involving any of
607 the same persons, facilities or places specified in the application,
608 and the action taken by the judge on each such application;

609 (7) where the application is for the extension of an order, the
610 results thus far obtained from the interception, or a reasonable
611 explanation of the failure to obtain such results; and

612 ii. (8) if it is reasonably necessary to make a secret entry upon a
613 private place and premises in order to install an intercepting
614 device to effectuate the interception, a statement to such effect.

615 iv. (c) The judge may require the applicant to furnish addi-
616 tional testimony or documentary evidence in support of the appli-
617 cation. A verbatim transcript of every such interrogation or
618 examination must be taken, and a transcription of the same, sworn
619 to by the stenographer, shall be attached to the application and be
620 deemed a part thereof.

621 (d) Upon such application the judge may enter an ex parte
622 order, as requested or as modified, authorizing or approving inter-
623 ception of wire, oral, or electronic communications within the
624 state, if the judge determines on the basis of the facts submitted by
625 the applicant that:

626 (1) there is probable cause for belief that an individual is com-
627 mitting, has committed, or is about to commit a particular offense
628 enumerated in Section G of this Chapter;

629 (2) there is probable cause for belief that particular communica-
630 tions concerning that offense will be obtained through such inter-
631 ception;

632 (3) normal investigative procedures have been tried and failed
633 or reasonably appear unlikely to succeed if tried or may otherwise
634 be too dangerous; and

635 vi. (4) except as provided in subsection (p), there is probable
636 cause for belief that the facilities from which, or the place where,
637 the wire, oral, or electronic communications are to be intercepted
638 are being used, or are about to be used, in connection with the
639 commission of such offense, or are leased to, listed in the name
640 of, or commonly used by such person.

641 vii. (e) Each order authorizing or approving the interception of
642 any wire, oral, or electronic communication under this Chapter
643 shall specify:

644 (1) the subscription and title of the issuing judge;

645 ix. (2) the identity of the person, if known, whose communica-
646 tions are to be intercepted;

647 x. (3) the nature and location of the communications facilities as
648 to which, or the place where, authority to intercept is granted;

649 (5) (4) a particular description of the type of communication
650 sought to be intercepted, and a statement of the particular offense
651 to which it relates;

652 (5) the identity of the agency authorized to intercept the com-
653 munications, and of the person authorizing the application;

654 (6) the period of time during which such interception is autho-
655 rized; and

656 xii. (7) an express authorization to make secret entry upon a
657 private place or premises to install a specified intercepting device,
658 if such entry is necessary to execute the warrant.

659 xiv. (f) An order authorizing the interception of a wire, oral, or
660 electronic communication under this Chapter shall, upon request
661 of the applicant, direct that a provider of wire or electronic com-
662 munication service, landlord, custodian, or other person shall fur-
663 nish the applicant forthwith all information, facilities, and
664 technical assistance necessary to accomplish the interception
665 unobtrusively and with a minimum of interference with the serv-
666 ices that such service provider, landlord, custodian, or person is
667 according the person whose communications are to be intercepted.
668 Any provider of wire or electronic communication service, land-
669 lord, custodian or other person furnishing such facilities or tech-
670 nical assistance shall be compensated therefor by the applicant for
671 reasonable expenses incurred in providing such facilities or assis-
672 tance.

673 xvi. (g) An order entered under this section may authorize or
674 approve the interception of any wire, oral, or electronic communi-
675 cation for the shorter of 30 days or the period necessary to achieve
676 the objective of the authorization. Such 30 day period begins on
677 the earlier of the day on which the investigative or law enforce-
678 ment officer first begins to conduct an interception under the order
679 or ten days after the order is entered, whichever occurs earliest.
680 Extensions of an order may be granted only upon application for
681 an extension made in accordance with subsection (b) of this
682 section and the court making the findings required by subsec-
683 tion (d) of this section. The period of extension shall be the
684 shorter of 30 days or the time the authorizing judge deems neces-
685 sary to achieve the purposes for which it was granted. Every
686 order and extension thereof shall contain a provision that the
687 authorization to intercept shall be executed as soon as practicable,
688 shall be conducted in such a way as to minimize the interception
689 of communications not otherwise subject to interception under
690 this Chapter, and must terminate upon the earlier of 30 days or the

691 attainment of the authorized objective. In the event the inter-
692 cepted communication is in a code or a foreign language, and an
693 expert in that foreign language or code is not reasonably available
694 during the interception period, minimization may be accomplished
695 as soon as practicable after such interception of the communica-
696 tion in full.

697 xviii. (h) An interception under this Chapter may be conducted
698 in whole or in part by federal, state, county or municipal per-
699 sonnel, or by an individual operating under a contract with the
700 state, county or municipality acting under the supervision of an
701 investigative or law enforcement officer authorized to conduct the
702 interception.

703 xx. (i) Whenever an order authorizing interception is entered
704 pursuant to this Chapter, the order may require reports to be made
705 to the judge who issued the order showing what progress has been
706 made toward achievement of the authorized objective and the
707 need for continued interception. Such reports shall be made at
708 intervals as the judge may require.

709 (j) Notwithstanding any other provision of this Chapter, any
710 investigative or law enforcement officer, specially designated by
711 the attorney for the state, may intercept a wire, oral or electronic
712 communication prior to issuance of an order approving the inter-
713 ception if

714 xxi. (1) the officer reasonably determines that:

715 xxii. (A) an emergency situation exists that involves immediate
716 danger of death or serious physical injury to any person or the
717 danger of escape of a prisoner; and there are grounds upon which
718 an order could be entered under this Chapter to authorize such
719 interception; and

720 (B) an application for an order approving the interception is
721 made in accordance with this section within 48 hours after the
722 interception has occurred, or begins to occur.

723 xxiv. (k) In the absence of an order approving an interception
724 described in subsection (j), such interception shall immediately
725 terminate upon the earlier of obtainment of the communication
726 sought or denial of the application.

727 xxvi. (l) In the event an application for approval of an intercep-
728 tion described in subsection (j) is denied, or in any other case
729 where the interception is terminated without an order having been

730 issued, the contents of any wire, oral, or electronic communication
731 intercepted shall be subject to the prohibitions set forth in Section
732 F and the civil remedies of Section Q. No such violation shall be
733 subject to criminal penalties.

734 xxviii. (m) (1) The contents of any wire, oral, or electronic
735 communication intercepted by any means authorized by this
736 Chapter shall, if possible, be recorded on tape or wire or other
737 comparable device. Upon examination of the return and a deter-
738 mination that it complies with this section, the issuing judge shall
739 forthwith order that the application, all renewal applications, war-
740 rant, all renewal orders and the return thereto be transmitted to the
741 chief justice by such persons as he shall designate. The applica-
742 tion, all renewal applications, warrant, all renewal orders and the
743 return shall be stored in a secure place which shall be designated
744 by the chief justice, to which access shall be denied to all persons
745 except the chief justice or such court officers or administrative
746 personnel of the court as he shall designate.

747 xxix. The recordings shall not be destroyed except upon an
748 order of the issuing or denying judge and in any event shall be
749 kept for ten years. Notice prior to the destruction shall be given to
750 the applicant attorney general or his successor or the applicant
751 district attorney or his successor and upon a showing of good
752 cause to the chief justice, the application, warrant, renewal and
753 return may be kept for such additional period as the chief justice
754 shall determine but in no event longer than the longest period of
755 limitation for any designated offense specified in the warrant,
756 after which time they must be destroyed by a person designated by
757 the chief justice. Duplicate recordings may be made for use or
758 disclosure pursuant to the provisions of Section H(a) of this
759 Chapter for investigations. The presence of the seal provided for
760 by this subsection, or a satisfactory explanation for the absence
761 thereof, shall be a prerequisite for the use or disclosure of the con-
762 tents of any wire, oral, or electronic communication, or evidence
763 derived therefrom, under Section H(b).

764 xxx.(2) Applications made and orders granted under this
765 Chapter shall be sealed by the judge. Such applications and
766 orders shall be disclosed only upon a showing of good cause
767 before a judge of competent jurisdiction and shall not be
768 destroyed except on order of the issuing or denying judge, and in
769 any event shall be kept for ten years.

770 xxxi. (3) Except as otherwise provided in subparagraph (a),
771 within a reasonable time, not to exceed 90 days, after the filing of
772 an application for an order of approval under subsection (l) which
773 is denied, or the termination of the period of an order or exten-
774 sions thereof, an investigative or law enforcement officer of the
775 commonwealth shall serve an attested copy of the warrant or the
776 renewal on the persons named in the warrant, and such other
777 aggrieved person who shall reasonably be known to the person
778 who obtained the warrant as a result of information obtained from
779 an authorized interception. The attested copy of the warrant shall
780 be served by leaving the same at his usual place of abode, or in
781 hand, or if this is not possible by mailing the same by certified or
782 registered mail to his last known place of abode. A return of
783 service shall be made to the issuing judge, except, that if such
784 service is postponed as provided in this subparagraph, it shall be
785 made to the chief justice. The return of service shall be deemed a
786 part of the return of the warrant and attached thereto.

787 (a) Upon an ex parte showing of important special facts which
788 set forth the need for continued secrecy to the satisfaction of the
789 issuing judge, said judge may direct that the attested copy of the
790 warrant be served on such parties as are required by this subsec-
791 tion at such time as may be appropriate in the circumstances but in
792 no event may he it to be served later than three (3) years from the
793 time of expiration of the warrant or the last renewal thereof.

794 xxxiv. (b) The judge, upon the filing of a motion, may make
795 available to such person or such person's counsel for inspection
796 such portions of the intercepted communications, applications and
797 orders as the judge determines to be in the interest of justice.

798 xxxvi. (n) The contents of any wire, oral or electronic commu-
799 nication intercepted pursuant to this Chapter, or evidence derived
800 therefrom, shall not be received in evidence or otherwise dis-
801 closed in any trial, hearing, or other proceeding in a court of the
802 Commonwealth unless each party, not less than ten days before
803 the trial, hearing, or proceeding, has been furnished with a copy of
804 the court order and accompanying application under which the
805 interception was authorized or approved and a complete copy of
806 each recording or a statement under oath of the evidence over-
807 heard as a result of the transmission which the Commonwealth
808 intends to offer in evidence. This ten day period may be waived

809 by the judge if the judge finds that it was not possible to furnish
810 the party with the above information ten days before the trial,
811 hearing or proceeding and that the party will not be prejudiced by
812 the delay in receiving such information.

813 (o) Any aggrieved person who is a party in any trial, hearing, or
814 proceeding in or before any court, department, officer, agency,
815 regulatory body, or other authority of this state, or a political sub-
816 division thereof, may move to suppress the contents of any wire,
817 oral or electronic communication intercepted pursuant to this
818 Chapter, or evidence derived therefrom, on the grounds that:

819 (1) the communication was unlawfully intercepted;

820 (2) the application or renewal failed to set forth facts sufficient
821 to establish probable cause for the issuance of the warrant;

822 xxxvii.(3) the order of authorization or approval under which it
823 was intercepted is insufficient on its face or does not conform
824 with the provisions of this chapter; or

825 (4) the interception was not made in conformity with the order
826 of authorization or approval.

827 xl. Such motion shall be made before the trial, hearing, or pro-
828 ceeding unless there was no opportunity to make such motion or
829 the person was not aware of the grounds of the motion. If the
830 motion is granted, the contents of the intercepted wire or oral
831 communication, or evidence derived therefrom, shall be sup-
832 pressed.

833 (p) The requirements of subsections (b)(3)(B) and (d)(4) of this
834 section relating to the specification of the facilities from which, or
835 the place where, the communication is to be intercepted are inap-
836 plicable if:

837 (1) in the case of an application with respect to the interception
838 of an oral communication:

839 (A) the application is by an investigative or law enforcement
840 officer and is approved by the attorney for the state;

841 (B) the application contains a full complete statement as to why
842 such specification is not practical and identifies the person com-
843 mitting the offenses and whose communications are to be inter-
844 cepted; and

845 (C) the judge finds that such specification is not practical; and

846 (2) in the case of an application with respect to a wire or elec-
847 tronic communication:

848 (A) the application is by an investigative or law enforcement
849 officer and is approved by the attorney for the state;

850 (B) the application identifies the person believed to be commit-
851 ting the offense and whose communications are to be intercepted
852 and the applicant makes a showing of a purpose, on the part of
853 that person, to thwart interception by changing facilities; and

854 xlii. (C) the judge finds that such purpose has been adequately
855 shown.

856 xliv. (q) An interception of a communication under an order to
857 which the requirements of subsections (b)(3)(B) and (d)(4) of this
858 section do not apply by reason of subsection (p) shall not begin
859 until the facilities from which, or the place where, the communi-
860 cation is to be intercepted is ascertained by the person imple-
861 menting the interception order. A provider of wire or electronic
862 communication service that has received an order as provided for
863 in subsection (p)(2) may move the court to modify or quash the
864 order on the ground that its assistance with respect to the intercep-
865 tion cannot be performed in a timely or reasonable fashion. The
866 court, upon notice to the state, shall decide such a motion expedi-
867 tiously.

868 xlvj. J. Warrant Return

869 xlviii. Within seven days after termination of the warrant or the
870 last renewal thereof, a return must be made thereon to the judge
871 issuing the warrant by the applicant therefor, containing the
872 following:

873 l.(a) A statement of the nature and location of the communica-
874 tions facilities, if any, and premise or places where the intercep-
875 tions were made; and

876 lii.(b) The periods of time during which such interceptions were
877 made; and

878 liv.(c) The names of the parties to the communications inter-
879 cepted if known; and

880 lvi.(d) The original recording of the oral, wire or electronic
881 communications intercepted, if any; and

882 lviii.(e) A statement attested under the pains and penalties of
883 perjury by each person who heard oral or wire communications as
884 a result of the interception authorized by the warrant, which were
885 not recorded, stating everything that was overheard to the best of
886 his recollection at the time of the execution of the statement.

887 lix.K. General Prohibition on Pen Register and Trap and Trace
888 Device Use; Exceptions.

889 lxi. (a) Except as provided in Section O(b) of this Chapter, no
890 person may install or use a pen register or a trap and trace device
891 without first obtaining a court order under Section L of this
892 Chapter.

893 lxii. (b) The prohibition of section (a) is inapplicable with
894 respect to the use of a pen register or a trap and trace device by a
895 provider of electronic or wire communication service:

896 (1) (A) relating to the operation, maintenance, and testing of a
897 wire or electronic communication service or to the protection of
898 the rights or property of such provider, or to the protection of
899 users of that service from abuse of service or unlawful use of
900 service; or

901 lxv. (B) to record the fact that a wire or electronic communica-
902 tion was initiated or completed in order to protect such provider,
903 another provider furnishing service toward the completion of the
904 wire communication, or a user of that service, from fraudulent,
905 unlawful or abusive use of service; or

906 lxvi. (2) where the consent of the user of that service has been
907 obtained.

908 lxviii. (c) A government agency authorized to install and use a
909 pen register or trap and trace device under Sections K through O
910 shall use technology reasonably available to it that restricts the
911 recording or decoding of electronic or other impulses to the
912 dialing, routing, addressing, and signaling information utilized in
913 the processing and transmitting of wire or electronic communica-
914 tions so as not to include the contents of any wire or electronic
915 communications.

916 lxx. (d) A person who knowingly violates subsection (a) shall
917 be fined not more than \$5,000.00 for each violation, or impris-
918 oned in a jail or house of correction for not more than one year, or
919 both such fine and imprisonment.

920 lxxii. L. Application for an Order for a Pen Register or Trap
921 and Trace Device.

922 lxxiv. (a) A state investigative or law enforcement officer
923 authorized by the attorney for the state may make application in
924 writing under oath or equivalent affirmation to a court of compe-
925 tent jurisdiction for an order or an extension of an order under

926 Section M of this Chapter authorizing or approving the installa-
927 tion and use of a pen register or a trap and trace device under this
928 Chapter.

929 (b) An application under subsection (a) shall include:

930 (1) the identity of the attorney for the state or the law enforce-
931 ment or investigative officer making the application and the iden-
932 tity of the law enforcement agency conducting the investigation;
933 and

934 lxxvi.(2) a certification under oath by the applicant that the
935 information likely to be obtained is relevant to an ongoing crim-
936 inal investigation being conducted by that agency.

937 lxxviii.M. Issuance of an Order for a Pen Register or a Trap
938 and Trace Device.

939 (a) In general:

940 lxxx.(1) Upon an application made under Section L, the court
941 shall enter an ex parte order authorizing the installation and use of
942 a pen register or trap and trace device within the jurisdiction of
943 the court, if the court finds that the State law enforcement or
944 investigative officer has certified to the court that the information
945 likely to be obtained by such installation and use is relevant to an
946 ongoing criminal investigation.

947 (2) (A) Where the law enforcement agency implementing an ex
948 parte order under this subsection seeks to do so by installing and
949 using its own pen register or trap and trace device on a packet-
950 switched data network of a provider of electronic communication
951 service to the public, the agency shall ensure that a record will be
952 maintained which will identify:

953 (i) any officer or officers who installed the device and any
954 officer or officers who accessed the device to obtain information
955 from the network;

956 (ii) the date and time the device was installed, the date and time
957 the device was uninstalled, and the date, time, and duration of
958 each time the device is accessed to obtain information;

959 (iii) the configuration of the device at the time of its installation
960 and any subsequent modification thereof; and

961 lxxxiii.(iv) any information which has been collected by the
962 device.To the extent that the pen register or trap and trace device
963 can be set automatically to record this information electronically,
964 the record shall be maintained electronically throughout the instal-
965 lation and use of such device.

966 lxxxv.(B) The record maintained under subparagraph (A) shall
967 be provided ex parte and under seal to the court which entered the
968 ex parte order authorizing the installation and use of the device
969 within 30 days after termination of the order (including any exten-
970 sions thereof). Upon examination of the return and a determina-
971 tion that it complies with this section, the issuing judge shall
972 forthwith order that the application, all renewal applications, war-
973 rant, all renewal orders and the return thereto be transmitted to the
974 chief justice by such persons as he shall designate. Their contents
975 shall not be disclosed except as provided in this section. The
976 application, renewal application(s), warrant(s), the renewal
977 order(s) and the return or any one of them or any part of them may
978 be transferred to any trial court, grand jury proceeding of any
979 jurisdiction by any law enforcement or investigative officer or
980 court officer designated by the chief justice and a trial justice may
981 allow them to be disclosed in accordance with Section H.

982 lxxxix. The application, all renewal applications, warrant, all
983 renewal orders and the return shall be stored in a secure place
984 which shall be designated by the chief justice, to which access
985 shall be denied to all persons except the chief justice or such court
986 officers or administrative personnel of the court as he shall desig-
987 nate.

988 Any violation of the terms and conditions of any order of the
989 chief justice, pursuant to the authority granted in this paragraph,
990 shall be punished as a criminal contempt of court in addition to
991 any other punishment authorized by law.

992 xc. (b) An order issued under this section:

993 (1) shall specify:

994 (A) the identity, if known, of the person to whom is leased or in
995 whose name is listed the telephone line or other facility to which
996 the pen register or trap and trace device is to be attached or
997 applied;

998 (B) the identity, if known, of the person who is the subject of
999 the criminal investigation;

1000 (C) the attributes of the communications to which the order
1001 applies, including the number or other identifier and, if known,
1002 the location of the telephone line or other facility to which the pen
1003 register or trap and trace device is to be attached or applied, and,
1004 in the case of an order authorizing installation and use of a trap
1005 and trace device under subsection (a)(2), the geographic limits of
1006 the order; and

1007 (D) a statement of the offense to which the information likely
1008 to be obtained by the pen register or trap and trace device relates;
1009 and

1010 xcii. (2) shall direct, upon the request of the applicant, the fur-
1011 nishing of information, facilities, and technical assistance neces-
1012 sary to accomplish the installation of the pen register or trap and
1013 trace device under Section N.

1014 (c) An order issued under this section:

1015 (1) shall authorize the installation and use of a pen register or a
1016 trap and trace device for a period not to exceed 60 days; and

1017 xciv.(2) may be granted only upon an application for an order
1018 under Section L of this Chapter after a judicial finding required by
1019 subsection (a). Any period(s) of extension shall not exceed 60
1020 days.

1021 (d) An order authorizing or approving the installation and use
1022 of a pen register or a trap and trace device shall direct that:

1023 (1) the order be sealed until otherwise ordered by the court;

1024 xcv.(2) the person owning or leasing the line or other facility to
1025 which the pen register or a trap and trace device is attached or
1026 applied, or who is obligated by the order to provide assistance to
1027 the applicant, not disclose the existence of the pen register or trap
1028 and trace device or the existence of the investigation to the listed
1029 subscriber, or to any other person, unless or until otherwise
1030 ordered by the court; and

1031 xcvi. (3) a violation of this subsection may be punished as a
1032 contempt of the issuing or denying court.

1033 xcix. N. Assistance in Installation and Use of a Pen Register
1034 or a Trap and Trace Device.

1035 ci. (a) Upon the request of the attorney for the state or an inves-
1036 tigative or law enforcement officer authorized to install and use a
1037 pen register under this Chapter, a provider of wire or electronic
1038 communication service, landlord, custodian, or other person shall
1039 furnish such investigative or law enforcement officer forthwith all
1040 information, facilities, and technical assistance necessary to
1041 accomplish the installation of the pen register unobtrusively and
1042 with a minimum of interference with the service that the person so
1043 ordered by the court accords the party with respect to whom the
1044 installation and use is to take place, if such assistance is directed
1045 by a court order as provided in Section M(b)(2) of this Chapter.

1046 ciii. (b) Upon the request of the attorney for the state or an
1047 investigative or law enforcement officer authorized to receive the
1048 results of a trap and trace device under this Chapter, a provider of
1049 a wire or electronic communication service, landlord, custodian,
1050 or other person shall install such device forthwith on the appro-
1051 priate line or facility and shall furnish such investigative or law
1052 enforcement officer all additional information, facilities and tech-
1053 nical assistance including installation and operation of the device
1054 unobtrusively and with a minimum of interference with the serv-
1055 ices that the person so ordered by the court accords the party with
1056 respect to whom the installation and use is to take place, if such
1057 installation and assistance is directed by a court order as provided
1058 in Section M(b)(2) of this Chapter. Unless otherwise ordered by
1059 the court, the results of the trap and trace device shall be fur-
1060 nished, pursuant to Section M(b) or Section O of the Chapter, to
1061 the attorney for the state or the investigative or law enforcement
1062 officer, designated in the court order, at reasonable intervals
1063 during regular business hours for the duration of the order.

1064 cv. (c) A provider of a wire or electronic communication
1065 service, landlord, custodian, or other person who furnishes facili-
1066 ties or technical assistance pursuant to this section shall be reason-
1067 ably compensated for such reasonable expenses incurred in
1068 providing such facilities and assistance.

1069 cvii. (d) No cause of action shall lie in any court against any
1070 provider of a wire or electronic communication service, its offi-
1071 cers, employees, agents, or other specified persons for providing
1072 information, facilities or assistance in accordance with a court
1073 order under this Chapter or request pursuant to Section O of this
1074 Chapter.

1075 cix. (e) A good faith reliance on a court order under this
1076 Chapter, a request pursuant to Section O of this Chapter, a legisla-
1077 tive authorization, or a statutory authorization is a complete
1078 defense against any civil or criminal action brought under this
1079 Chapter.

1080 cxi. (f) Any unexcused failure of the provider of an electronic
1081 or wire communications service to comply with a court order
1082 under this Chapter or a request pursuant to Section O may be pun-
1083 ished as a contempt of the issuing court.

1084 cxiii. O. Emergency Pen Register and Trap and Trace Device
1085 Installation and Use.

1086 (a) Notwithstanding any other provision of this Chapter, any
1087 investigative or law enforcement officer, specially designated by
1088 the attorney for the state, may have installed and use a pen register
1089 or trap and trace device if:

1090 (1) the officer reasonably determines that an emergency situa-
1091 tion exists that involves immediate danger of death or serious
1092 bodily injury to any person or the danger of escape of a prisoner;
1093 and

1094 cxv.(2) within 48 hours after the installation has occurred, or
1095 begins to occur, an order approving the installation or use is
1096 issued in accordance with Section M of this Chapter.

1097 cxvii. (b) In the absence of an authorizing order, such use shall
1098 immediately terminate upon the earlier of obtainment of the infor-
1099 mation sought, denial of the application, or the lapse of 48 hours
1100 since the installation of the pen register or trap and trace device.

1101 cxix. (c) The knowing installation or use by any investigative
1102 or law enforcement officer of a pen register or trap and trace
1103 device pursuant to subsection (a) without application for the
1104 authorizing order within 48 hours of the installation shall consti-
1105 tute a violation of this Chapter and shall make such person liable
1106 to the penalties outlined in Section K(d) of this Chapter, unless a
1107 court of competent jurisdiction in its discretion determines that the
1108 failure to obtain a timely order pursuant to this section was the
1109 result of mitigating or other circumstances.

1110 cxxi. (d) A provider for a wire or electronic service, landlord,
1111 custodian, or other person who furnished facilities or technical
1112 assistance pursuant to this section shall be reasonably compen-
1113 sated for such reasonable expenses incurred in providing such
1114 facilities and assistance.

1115 cxxiii. (e) No cause of action shall lie in any court against any
1116 provider of wire or electronic communication service, its officers,
1117 employees, or agents, landlord, custodian, or other specified
1118 person for providing information, facilities, or assistance in accor-
1119 dance with the terms of this Section.

1120 cxxv. P. Reports Concerning Intercepted Wire, Oral, or Elec-
1121 tronic Communications and Pen Register and Trap and Trace
1122 Devices.

1123 (a) On the second Friday of January, each year, the attorney
1124 general and each district attorney shall report to the general court:

1125 (1) a general description of the interceptions made under such
1126 order or extension, including:

1127 (A) the number of applications made for warrants during the
1128 previous year;
1129 (B) the name of the applicant;
1130 (C) the number of warrants issued;
1131 (D) the effective period of the warrants;
1132 (E) the number and designation of the offenses for which those
1133 applications were sought, and for each of the designated offenses
1134 the following:
1135 (i) the number of renewals,
1136 (ii) the number of interceptions made during the previous year,
1137 (iii) the number of indictments believed to be obtained as a
1138 result of those interceptions,
1139 (iv) the number of criminal convictions obtained in trials where
1140 interception evidence or evidence derived therefrom was intro-
1141 duced
1142 cxxvii. (2) the number of pen register orders and orders for
1143 trap and trace devices applied for by investigative or law enforce-
1144 ment officers of the state.
1145 cxxix. (b) This report shall be a public document and be made
1146 available to the public at the offices of the attorney general and
1147 district attorneys. In the event of failure to comply with the provi-
1148 sions of this paragraph any person may compel compliance by
1149 means of an action of mandamus.
1150 cxxxi. Q. Authorized Recovery of Civil Damages.
1151 cxxxiii. (a) Except as provided in Section M(c), any person
1152 whose wire, oral, or electronic communication is intercepted, dis-
1153 closed, or intentionally used in violation of this Chapter may in a
1154 civil action recover from the person or entity, other than the
1155 United States, the Commonwealth of Massachusetts or any polit-
1156 ical subdivision thereof, which engaged in that violation such
1157 relief as may be appropriate:
1158 (b) In an action under this section, appropriate relief includes:
1159 (1) damages under subsection (c) and punitive damages in
1160 appropriate cases; and
1161 cxxxvi. (2) a reasonable attorney's fee and other litigation costs
1162 reasonably incurred.
1163 (c) The court may assess as damages whichever is the greater
1164 of:
1165 (1) the sum of the actual damages suffered by the plaintiff and
1166 any profits made by the violator as a result of the violation; or

1167 (2) \$100 a day for each day of violation; or
1168 cxxxviii.(3) \$1,000.
1169 (1)(d) A complete defense against any civil action brought
1170 under this Chapter is a good faith reliance on a court warrant or
1171 order, a grand jury subpoena, a legislative authorization, or a
1172 statutory authorization;
1173 (2)(1) a request of an investigative or law enforcement officer
1174 under Section I(j) of this Chapter; or
1175 cxl.(2) a good faith determination that Section C(d) of this
1176 Chapter permitted the conduct complained of.
1177 cxlii.(e) A civil action under this section may not be com-
1178 menced later than two years after the date upon which the
1179 claimant first has a reasonable opportunity to discover the viola-
1180 tion
1181 cxliv. R. Severability.
1182 If any provisions of this Chapter or application thereof to any
1183 person or circumstance is held invalid, the invalidity does not
1184 affect other provisions or applications of the Chapter which can be
1185 given effect without the invalid provisions or application, and to
1186 this end the provisions of this Chapter are severable.